IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 144 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAMPABEN W/O MAGANBHAI RAMJIBHAI KHALASI

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for the Petitioner.

MR KAMEN N SHUKLA for Petitioner No. 1

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/06/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged order dated 6.12.2003, by which the petitioner, who is a lady detenue, is detained as a 'Bootlegger' under the provisions of the Prevention of Anti Social Activities Act, 1985 ("PASA", for short).

Along with the detention order, the petitioner is also served with the grounds of detention. The aforesaid detention order is challenged on various grounds.

It is argued by Mr.Dave that the cases lodged against the petitioner are all under the Bombay Prohibition Act and, therefore, it cannot be said that there is a breach of public order. He further submitted that, even though various grounds are raised in the petition, he is confining his argument to only one of the grounds, viz., delay in deciding the representation of the petitioner. In paragraph 23 of the petition, it is averred that the Advocate of the detenu made a representation dated 18.12.2003, addressed to the Commissioner of Police, Surat, by registered post A.D., but the same was not disposed of expeditiously and that on the ground of delay in deciding the representation, the order of detention is required to be quashed.

On behalf of the State Government, Ms.Archana Raval, learned AGP, pointed out that the representation of the petitioner, which was addressed to the Commissioner of Police, was received by the said office on 20.12.2003. As the State Government confirmed the order of detention, subsequently, the said representation was despatched to the State Government on 24th December, 2003 and the State received the same on 30th December, 2003. On 31st December, 2003, the decision of the State Government was despatched to the concerned authority for communicating the same to the detenu. She submitted that, therefore, there is no delay on the part of the State to decide the representation. However, it is clear from the submission of the learned AGP that though the representation was received by the Commissioner of Police on 20.12.2003, the same was not despatched to the State Government till 24th December, 2003. Once the Government had approved the detention order, the representation was required to be despatched to the State Government immediately for decision. There is a delay from 20th December, 2003 to 24th December, 2003 in despatching the said representation. Even if some decision was taken on 22.12.2003, there was no reason not to despatch it to the State Government forthwith, with the result that for about four days, the representation of the petitioner was not sent to the State Government.

Mr.Dave has placed reliance on the decision of this Court in Mineshkumar Hiralal Parmar v. State of Gujarat, 2002(3) G.L.H. (U.J.) 2. This Court, on the ground of delay of two days in despatching the representation has set aside the detention order. The

relevant observations are finding place in paragraphs 12 and 13, which read as under :-

" ... ...

12. In the above cited decision again this Court (Coram : C.K. Buch, J.) has held that unexplained delay of 2 days would go to the root of the validity of the order of detention and continued detention of the petitioner while dealing with Special Civil Application No. 5416 of 2000 and Special Civil Application No.5491 of 2002 decided on 1.9.2000.

13. Mr.M.H. Patel, learned AGP for the respondent - State has resisted this application by placing reliance on 2 different decisions. The first decision is in the case of Rajendrakumar Natverlal Shah v. State of Gujarat & Ors., reported in AIR 1988 SC 1255 (relevant para 15) where the Apex Court has observed that it is not necessary to much stress on the point of unexplained delay in disposal of the representation made by the Court has held that the appellant had made his representation to the State Government as well as to the Advisory Board on 8.6.1984. There was no delay much less inordinate delay in considering the representation. But here in the present case the detaining authority was not considering the representation but the detaining authority had to forward the same to the State Government. So the requirement to explain the delay on each day should be viewed strictly. It is not a case where the detaining authority had tried to explain the delay and the same is not found to be satisfactorily explained. But this is a case of unexplained delay. So on this ground the ratio of the second decision cited by the learned AGP reported in 1993 GCD 707 also would not help the State machinery. In this decision also a few days delay has not been an inordinate delay or undue delay because the authority was supposed to forward the representation to the State Government only. So on this sole

ground itself the order of detention requires to be quashed and set aside.

... ..."

In the instant case, there is a delay of four days in despatching the representation, which remains unexplained. Under the circumstances, only on the ground of delay in despatching the representation to the State Government, this petition is required to be allowed.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless she is required in connection with any other case. The Rule is made absolute accordingly.

22nd June, 2004 (P.B. Majmudar, J.)

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(apj)